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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
RONALD LASSITER	)	OEA Matter No. J-0222-11
Employee	)	
	)	Date of Issuance: December 12, 2011
v.	)	
	)	Lois Hochhauser, Esq.
DISTRICT OF COLUMBIA DEPARTMENT OF	)	Administrative Judge
PUBLIC HEALTH	)	
Agency	)	
	)	

Ronald Lassiter, Employee  
Phillip Husband, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND STATEMENT OF FACTS**

Ronald Lassiter, Employee, filed a petition with the Office of Employee Appeals (OEA) on September 16, 2011, appealing the decision of the D.C. Department of Health, Agency, to terminate his employment. In his petition, he identified himself as a term employee in the career service. On October 11, 2011, Agency filed a motion asking that OEA dismiss the petition because Employee had not been terminated. Agency stated it had issued a proposed notice to Employee on September 2, 2011, in which it notified Employee of its intention to terminate his employment effective on October 4, 2011 and it placed him on administrative leave at that time. However, according to Employee, it rescinded the action on September 27, 2011, and in fact, extended Employee's term appointment for an additional 13 months. Agency argued that since Employee was never terminated, this Office lacks jurisdiction to hear the appeal.

The matter was assigned to me on or about October 28, 2011. On November 8, 2011, I issued an Order directing Employee to present legal and/or factual support for his position regarding this Office's jurisdiction based on Agency's argument that he was not terminated as well as his status as a career employee. Employee was advised that he has the burden of proof on all issues of jurisdiction. Employee was notified that his response was due by no later than 4:00 p.m. on November 30, 2011. The parties were advised that the record would close at 5:00 p.m. on November 30, 2011 unless

notified to the contrary. Employee did not respond to the Order, and the record closed on November 30, 2011.

### JURISDICTION

The jurisdiction of this Office was not established.

### ISSUE

Should this petition be dismissed?

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

This Office's jurisdiction is conferred upon it by law. Pursuant to D.C. Official Code §1-606.03(a), this Office's jurisdiction is limited to appeals involving performance ratings that result in removals, final agency decisions that result in removals, reductions in grade, suspensions of ten days or more, placement on enforced leave and reductions-in-force. In this matter, Employee filed his petition for appeal prior to the effective date of the termination. He has submitted nothing that contradicts Agency's representation that it rescinded the action and he has remained employed. His term appointment was, in fact, extended by Agency.

Pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999), Employee has the burden of proof on issues of jurisdiction. Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 629.1, as that "degree of relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue". Employee was given the opportunity to meet his burden of proof on this issue, but did not do so. *See*, OEA Rule 604.1, 46 D.C.Reg. 9299 (1999). According to Agency, Employee was not terminated from his position. If he was not terminated, there is no basis to hear this matter, which is based on his termination. Therefore, I conclude that Employee did not meet his burden of proof on the issue of jurisdiction.

Employee's failure to respond to the Order provides an additional basis to dismiss this petition. In accordance with OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. In this matter, Employee failed to respond to the Order issued on November 8, 2011 which directed him to respond by November 30, 2011. The Order was sent to Employee at the address he listed as his home address in his petition, by first class mail, postage prepaid and was not returned by the U.S. Postal Service. It is therefore deemed delivered. Employee did not seek an extension or contact this Office about the matter. This Office has long held that failure to prosecute an appeal includes the failure to submit "required documents after being provided with a deadline for such submission." *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985).<sup>1</sup>

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<sup>1</sup> Since two grounds for dismissal have been stated, the issue of Employee's status as a term employee will

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

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LOIS HOCHHAUSER, ESQ.  
Administrative Judge

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not be addressed.